

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





ORIGINAL

# 76-1596

B  
P/S

IN THE  
**United States Court of Appeals**  
For the Second Circuit

No. 76-1596

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*against*

ANDREW GARGUILO,

*Defendant-Appellant.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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**DEFENDANT-APPELLANT'S APPENDIX**

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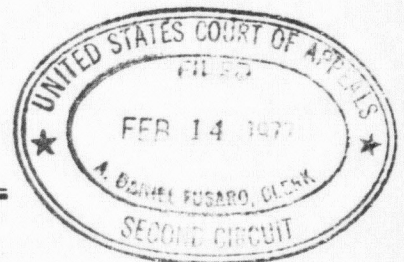
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*Attorney for Defendant-Appellant*

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Docket Entries

75 CR 736



DOCKET ENTRIES

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

75 CR 736

v.

ANDREW GARGUILO

-----X

Proceedings

10-6-75	Before Neaher, J - Indictment filed.
10-17-75	Before Schiffman, Magistrate Deft. pleaded not guilty. Deft. arraigned Bail set \$75,000 PRB. All motions to be made before Judge Neaher - October 27, 1975.
11-5-75	Before NEAHER, J. - Case called- deft not present - counsel present - case adjd to 12/15/75 for status report-trial set for 3/29/76 at 10:00 A.M. for trial.
12/15/75	Before NEAHER, J. - Case called - deft and counsel not present - case adjd to 3/29/76 at 10:00 A.M. for trial.
1-13-76	Govts answering affidavit filed to motions of defendant.
1/23/76	Notice of Readiness for Trial filed.
1-30-76	Before NEAHER, J. - case called - atty present - deft not present - motions granted and denied as indicated on the record - motion for severance argued - decision reserved - adjd without date.

3-5-76            SUPERSEDING INFORMATION FILED

3-12-76           Before NEAHER, J - case called - deft & counsel  
Ronald Fischetti present - deft enters plea  
of not guilty to the superseding information -  
Govt moves to consolidate 75 CR 736 and 75 CR  
736(S) granted - bail: \$75,000 contd.

3/12/76           Before CATOGGIO, . Mag. deft. Andrew Garguilo  
present Bail \$75,000 PRB is continued. Mag.  
cannot take the plea of not guilty. Plea has  
to be done before Judge Neaher, Trial June 1,  
1976 at 10:00 A.M. before Judge Neaher.

5/19/76           Letter from Benjamin Lewis dated 5/18/76 and  
accompanying letter from Dr. Weiser filed.

6/7/76           Before PRATT, J - case called - deft & counsel  
present - deft waives rights to speedy trial at  
least to 9-20-76. Adj'd to 9-8-76 at 4:00 PM  
for premarking of exhibits - adj'd to 9-20-76  
at 10:00 am for trial.

9/20/76           Before PRATT, J. - case called. Deft. &  
Counsel present. Adj'd to 9/27/76 at 10:00  
a.m. for trial.

9/30/76           Before PRATT, J. - Case called-Deft and counsel  
present-Motion to dismiss ct 6 of superseding  
indictment argued and granted-Motion to consolidate  
75 CR 692 and 75 CR 736 argued-Motion granted  
Cases consolidated for trial purposes. Trial  
ordered and begun-Jury selected and sworn-Gov't  
opens-Trial cont'd to 10-1-76.

10/4/76           Before PRATT, J. - Case called-Deft and counsel  
present-Trial resumed-Trial cont'd to 10-5-76.



- 10/5/76 Before PRATT, J.-Case called-Deft and counsel present-Trial resumed-Trial cont'd to 10-6-76 at 10:00 AM.
- 10/6/76 Before PRATT, J.-Case called-Defts and counsel present-Trial resumed-Both sides rest-Deft's motion to dismiss and for Judgment of Acquittal Argued-Motions denied-Trial cont'd to 10-7-76.
- 10/7/76 Before PRATT, J.-Case called-Deft and counsel present-Trial resumed-Deft's motion to dismiss argued and denied-Trial cont'd to 10-8-76.
- 10/12/76 7 transcripts filed (dated 9-30; 10-1; 10-5; 10-6; 2 dated 10-7 and one dated 10-8 respectively)
- 10-12-76 Before Pratt, J - case called - trial resumed - jury returns and finds the deft guilty on counts 5 & 7 - and not guilty on other counts (1,6 & 8) bail contd-Jury discharged - trial concluded - sentence adjd without date.
- 10-13-76 Stenographers transcript dated Oct. 12, 1976 filed.
- 10-8-76 Before PRATT, J. - Case called-Defts and counsel present-Trial resumed-Govt sums up-Defts sum up-Judge charges jury-Marshals sworn-Alternatives discharged-Trial to cont. on 10/12/76 at 10:00 A.M.
- 12-8-76 Sentencing Memorandum Submitted on Behalf of the Deft. filed.



- 12-10-76 Before Pratt, J. - Case Called. Deft. & Counsel present. Deft. sentenced on count 5 to imprisonment for a period of 6 months and to pay a fine of \$2,500.00 Deft. sentenced on count 7 to imprisonment for a period of 6 months and to pay a fine of \$2,500.00. Execution of sentence on count seven is suspended and the deft. is placed on probation for a period of three years. Deft. probation period to commence upon completion of sentence on count 5. Execution of sentence stayed pending appeal. On motion of AUSA McCaffrey count 6 of the superseding indictment is dismissed as well as the underlying indictment.
- 12-10-76 Judgement and Commitment filed. Certified Copies to Marshal & Probation.
- 12-10-76 Notice of appeal filed - docket entries and duplicate of notice mailed to court of appeals
- 12-20-76 Order received from the Court of Appeals that the appeal be docketed and the record filed on or before December 27, 1976 filed.
- 12/21/76 Record on appeal certified and mailed to the C of A.
- 1-5-77 Acknowledgment received from the Court of Appeals for the Record on Appeal filed.

Indictment

75 CR 736



*Filed: 10/6/75*  
*75CR 736*  
*Judge Keates*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

- v -  
ANTHONY GARGUILO, AND  
ANDREW GARGUILO

Defendants  
-----X

SUPERSEDING  
INDICTMENT

Title 18, United States  
Code, Section 371;  
Title 26, United States  
Code, Sections 7203,  
7206 (1)

THE GRAND JURY CHARGES:

COUNT ONE

That from on or about the 1st day of January, 1969, the exact date being to the grand jurors unknown, and continuously thereafter up to and including the date of the filing of this indictment, in the Eastern District of New York and elsewhere, the defendant ANTHONY GARGUILO and the defendant ANDREW GARGUILO, residents of Staten Island, New York, and Brooklyn, New York, respectively, did unlawfully, knowingly, and wilfully, conspire, combine, confederate and agree together, with each other, and with divers other persons to the grand jurors unknown to defraud the United States by impeding, impairing, obstructing, and defeating the lawful Governmental functions of the Internal Revenue Service of the Treasury Department of the United States in the ascertain- ment, computation, assessment, and collection of the revenue, to wit: income taxes, under the circumstances and by the means and in the manner following:

It was a part of said conspiracy that ANTHONY GARGUILO and ANDREW GARGUILO would file false and fraudulent federal individual income tax returns for certain years.

It was further a part of said conspiracy that ANDREW GARGUILO would refrain from filing individual federal income tax returns for certain years although required by law to file such returns.

OVERT ACTS

The defendants committed the following overt acts in furtherance of said conspiracy.

1) On or about the fifteenth day of April, 1970, in the Eastern District of New York, the defendant ANTHONY GARGUILO subscribed a false United States individual income tax return, Form 1040, for the calendar year 1969.

2) On or about the fifteenth day of April, 1971, in the Eastern District of New York, the defendant ANTHONY GARGUILO subscribed a false United States individual income tax return, Form 1040, for the calendar year 1970.

3) On or about the fifteenth day of April, 1972, in the Eastern District of New York, the defendant ANTHONY GARGUILO subscribed a false United States individual income tax return, Form 1040, for the calendar year 1971.

4) On or about the fifteenth day of April, 1972, in the Eastern District of New York, the defendant ANDREW GARGUILO subscribed a false United States individual income tax return, Form 1040, for the calendar year 1971.

[In violation of Title 18, United States Code, Section 371]

COUNT TWO

That on or about the fifteenth day of April, 1970) in the Eastern District of New York, ANTHONY GARGUILO, of Staten Island, New York, did wilfully and knowingly make and subscribe and cause to be made and subscribed a United States individual income tax return, Form 1040, for the calendar year 1969 which was verified by a written declaration that it was made under penalties of perjury and which was filed with the Internal Revenue Service in the names of Anthony and Victoria Garguilo, which income tax return he did not believe to be true and correct as to every



material matter, in that said return reported income from wages, interest, and rental property.

Whereas, as he then and there well knew and believed, he had substantial income in addition to that heretofore stated; and he then and there well knew and believed that he operated a gambling business and failed to disclose on said return the gross wagers received, expenses incurred, or other information relative to this business.

[In violation of Section 7206(1), Internal Revenue Code;  
26 United States Code, Section 7206(1).]

COUNT THREE

That on or about the fifteenth day of April, 1971, in the Eastern District of New York,

ANTHONY GARGUILO of Staten Island, New York, did wilfully and knowingly make and subscribe and cause to be made and subscribed a United States individual income tax return, Form 1040, for the calendar year 1970, which was verified by a written declaration that it was made under penalties of perjury and which was filed with the Internal Revenue Service in the names of Anthony and Victoria Garguilo, which income tax return he did not believe to be true and correct as to every material matter, in that said return reported income from wages, interest, commissions, and rental property.

Whereas, as he then and there well knew and believed he had substantial income in addition to that heretofore stated; and he then and there well knew and believed that he operated a gambling business and failed to disclose on said return the gross wagers received, expenses incurred, or any other information relative to this business.

[In violation of Section 7206(1), Internal Revenue Code;  
26 U.S.C., Section 7206(1).]

COUNT FOUR

That on or about the fifteenth day of April, 1972 in the Eastern District of New York,

ANTHONY GARGUILO, of Staten Island, New York, did wilfully and knowingly make and subscribe and cause to be made and subscribed a United States individual income tax return, Form 1040, for the calendar year 1971, which was verified by a written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service in the names of Anthony and Victoria Garguilo, which income tax return he did not believe to be true and correct as to every material matter, in that said return reported income from wages, interest, commissions and rental property.

Whereas, he then and there well knew and believed he had substantial income in addition to that heretofore stated; and he then and there well knew and believed that he operated a gambling business and failed to disclose on said return the gross wagers received, the expenses incurred, or any other information relative to this business.

[In violation of Section 7206(1), Internal Revenue Code;  
26 United States Code, Section 7206(1).]

COUNT FIVE

That during the calendar year 1969, ANDREW GARGUILO, who was a resident of Brooklyn, New York, operated a gambling business from which he received gross income in excess of \$600; that by reason of such income he was required by law following the close of the calendar year 1969 and on or before April 15, 1970, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, New York, in the Eastern Judicial District of New York, or to the District Director, Internal Revenue Service Center, North Atlantic Region, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he wilfully and knowingly failed to make said income tax return to the District Director of Internal Revenue, to the Director of the Internal Revenue Service Center, or to any other proper officer of the United States.

[In violation of Section 7203, Internal Revenue Code;  
26 United States Code, Section 7203.]



COUNT SIX

That during the calendar year 1970, ANDREW GARGUILO, who was a resident of Brooklyn, New York, operated a gambling business from which he received gross income in excess of \$1,700; that by reason of such income, he was required by law following the close of the calendar year 1970, and on or before April 15, 1971, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, New York, in the Eastern Judicial District of New York, or to the Director, Internal Revenue Service Center, North Atlantic Region, Andover, Massachusetts, stating specifically the items of his gross income, and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States.

[In violation of Section 7203, Internal Revenue Code;  
26 United States Code, Section 7203.]

COUNT SEVEN

That during the calendar year 1972, ANDREW GARGUILO, who was a resident of Brooklyn, New York, operated a gambling business from which he received gross income in excess of \$2,800; that by reason of such income, he was required by law following the close of the calendar year 1972, and on or before April 15, 1973, to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, New York, in the Eastern Judicial District of New York, or to the Director, Internal Revenue Service Center, North Atlantic Region, Andover, Massachusetts, stating specifically the items of his gross income, and any deductions and credits to which he was

entitled; that well knowing all of the foregoing facts, he did wilfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States.

[In violation of Section 7203, Internal Revenue Code;  
26 United States Code, Section 7203.]

COUNT EIGHT

That on or about the fifteenth day of April, 1972, in the Eastern District of New York,

ANDREW GARGUILO of Brooklyn, New York, did wilfully and knowingly make and subscribe and cause to be made and subscribed, a United States individual income tax return. Form 1040, for the calendar year 1971 which was verified by a written declaration that it was made under the penalties of perjury and which was filed with the Internal Revenue Service in the names of Andrew and Elaine Garguilo, which income tax return he did not believe to be true and correct as to every material matter, in that said return reported income from wages and dividends.

WHEREAS, as he then and there well knew and believed he had substantial income in addition to that heretofore stated; and he then and there well knew and believed that he operated a gambling business and failed to disclose on said return the gross wagers received, expenses incurred on any other information relative to this business.

[In violation of Section 7206(1), Internal Revenue Code;  
26 United States Code, Section 7206(1)]

A TRUE BILL.

FORELADY

\_\_\_\_\_  
DAVID G. TRAGER  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK



Memorandum and Order Denying Severance

Neaher, U.S.D.J. - February 23, 1976

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- -x

UNITED STATES OF AMERICA,

- against -

75 CR 692

ANTHONY GARGUILO and ANDREW  
GARGUILO,

MEMORANDUM  
and  
ORDER

Defendants.

----- -x

APPEARANCES:

DAVID G. TRAGER, Esq.  
United States Attorney  
Eastern District of New York  
and

DAVID MARGOLIS, Esq.  
Attorney in Charge  
Organized Crime Section

By: DONALD P. McCAFFREY, Esq.  
Special Attorney

PATRICK M. WALL, Esq.  
Attorney for Defendant Anthony Garguilo

LA ROSSA, SHARGEL & FISCHETTI, Esqs.  
Attorneys for Defendant Andrew Garguilo  
By: GERALD L. SHARGEL, Esq.

NEAHER, District Judge.

Defendants Anthony and Andrew Garguilo are charged in this eight-count indictment with filing false tax returns, 26 U.S.C. §7206(1) (three counts as to Anthony and one count as to Andrew), failing to file tax returns, 26 U.S.C. §7203



(three counts as to Andrew), and one count charging both of them with conspiring to file false returns and to refrain from filing returns. 18 U.S.C. §371. The thrust of the charges is that Anthony and Andrew, who are brothers, operated a gambling business and thereby received income from wages which they did not report to the Internal Revenue Service.

The case is now before the court on defendants' motions for discovery and a severance.

### Discovery

#### Witness Lists

The first branch of defendants' motion seeks disclosure of the government's witnesses prior to trial. Resolution of this request lies in the court's discretion.

The rule now seems to be that defendants are entitled to such a list unless the government makes "a prima facie showing that such disclosure would not be in the best interests of justice." United States v. Cannone, \_\_\_\_ F.2d \_\_\_\_, \_\_\_\_ (2 Cir. 1975; Sl. Op. 53, 64). Here, the government has expressed its fear that revealing its witnesses prior to trial might well subject them to intimidation, citing

information about defendants' reputed connection with "organized crime."

Defendants contend that if such a representation is held sufficient there would be nothing to prevent the government from making such an assertion in every case. Rather, defendants urge that the government should be required at least to represent to the court that witnesses have indicated apprehension and requested that their identities be withheld until trial.

The defendants' argument, however, proves too much. If the government were required to disclose the identity of its witnesses prior to trial unless some witnesses had actually expressed fear of reprisal or intimidation, the safety of government witnesses would then turn on their subjective beliefs concerning their safety instead of on the objective potential and propensity of the defendants to affect government witnesses.

The court's comments are not intended to imply that any evidence has been adduced that these defendants are likely to harm government witnesses or to influence their testimony. However, the court must take into consideration the fact



that although the indictment charges counts relating essentially to the income tax laws, the underlying business activity, i.e., gambling, is one commonly associated with organized crime. While the defendants are presumed innocent of these charges, the indictment "necessarily involved a finding by a grand jury of probable cause to believe that the crime had been committed." Cannone, supra, \_\_\_\_ F.2d at \_\_\_\_; Sl. Op. at 65.

Under these circumstances, the court holds that the government has made a prima facie showing of the need for non-disclosure. Having done so, the burden is shifted to the defendants to show a specific, as opposed to the obvious general, need for such information. Cannone, supra, \_\_\_\_ F.2d at \_\_\_\_; Sl. Op. at 66. Defendants have made no such showing.

Accordingly, this branch of the motion is denied.

#### Documentary Evidence

Relying on Rule 16(a)(1)(C), defendants demand production of all documentary evidence which the government intends to introduce at trial, including checks allegedly given to the defendants in the course of their gambling

business. The government concedes that it intends to introduce such checks in evidence but resists discovery because the checks reveal the identity of its witnesses.

Under Rule 16(a)(1)(C), disclosure by the government is mandatory. The court may, however, upon a sufficient showing, order that otherwise permissible discovery be denied under Rule 16(d)(1).

Here, as discussed above, the government has made known its fear that revelation of the identity of its witnesses may subject them to premature, illicit confrontation. While the government's showing on this point is far from cogent, it is sufficient when balanced against the defendants' need for pre-trial discovery of these checks. The indictment here charges the failure to file tax returns and the filing of false tax returns, not tax evasion under 26 U.S.C. §7201. Indeed, the government will provide defendants with the approximate amounts of income the government claims was not reported by each defendant. Thus, pre-trial knowledge of the specific amounts the government will prove were not reported is not essential to defense preparation. Cf. United States v. Empire State Paper Corp., 8 F.Supp. 220 (S.D.N.Y. 1934).



When the checks are offered at trial, defendants will then have an opportunity to examine them for authenticity. It is difficult to believe that they will need extensive investigation either to verify the checks, which presumably were endorsed by them, or to establish whether they reported those amounts as income on their returns.

#### Severance

Defendant Andrew Garguilo moves for a severance under Rule 8(b), F.R.Crim.P., on the ground that it is improper as a matter of law to join the charges against him with those against his brother or, in the alternative, for a discretionary severance under Rule 14, F.R.Crim.P.

#### Rule 8(b)

Andrew Garguilo's 8(b) severance motion is based on the argument that even conceding both defendants operated a gambling business, they are charged only with income tax violations which are by their nature personal. Defendant acknowledges that count one charges a conspiracy to file false tax returns and to refrain from filing tax returns but contends that the government cannot possibly prove such a

charge at trial.

For purposes of this motion, the conspiracy count, having been charged by the grand jury, is deemed sufficient, and mandates denial of this portion of the severance motion.

United States v. Miley, 513 F.2d 1191, 1209 (2 Cir. 1975).

See also United States v. Granello, 365 F.2d 990, 994 (2 Cir. 1966).

Rule 14

We come then to defendant's final request, that a severance be granted in the court's discretion to avoid prejudice at trial. Defendant Andrew Garguilo contends that a joint trial "would hopelessly obscure the question of the criminal liability of each defendant as a separate and distinct proposition." Def. Andrew Garguilo's Brief at 6. The Court disagrees.

The thrust of the defendant's argument is two-stepped: (1) that the government will be unable to prove the conspiracy count at trial, and (2) that consequently the defendants will have been prejudiced by the introduction of evidence that two brothers were jointly operating a gambling



business, necessitating a mistrial.

Initially, it would be unfair to assume the validity of defendant's basic premise, i.e., that the government will be unable to prove the conspiracy count. The grand jury returned an indictment charging the conspiracy and the court must assume that it had probable cause to do so. Nor can it be said that as a matter of common sense it is unreasonable to assume that persons operating a gambling business would discuss inter sese their plans with respect to reporting income from that business.


Moreover, it is unlikely that, aside from the tax returns filed and the evidence that others were not filed, the proof as to both defendants will vary in any material way. Thus, this is not a situation where a danger exists that the guilt of one defendant will spill over to the other.

The conceptual underpinning for Rule 8 is the promotion of speed and efficiency in the administration of justice by the avoidance of multiple trials. Bruton v. United States, 391 U.S. 123, 131 n. 6 (1968), quoting from Daley v. United States, 231 F.2d 123, 125 (1 Cir. 1956). Here, since the government has represented that a substantial portion of

the proof to be adduced at trial will relate simultaneously to both defendants, the interests of judicial economy will be best served by a joint trial.

The court is mindful of its continuing obligation "at all stages of the trial to grant a severance if prejudice does appear" and to be "particularly sensitive to the possibility of such prejudice" should the conspiracy count fail prior to reaching the jury. Schaffer v. United States, 362 U. S. 511, 516 (1960). Should prejudice appear during trial, the court can take corrective action. The motion for a severance is therefore denied at this time without prejudice to renewal at trial, if warranted.

SO ORDERED.

  
\_\_\_\_\_  
U. S. D. J.

Dated: Brooklyn, New York  
February 23, 1976



Excluded Letter from Murray  
Appleman, Esq. to Appellant

*Murray Appleman*  
*Attorney at Law*

20

253 Broadway, New York, N.Y. 10007  
8 Rutherford Drive • Blauvelt, N.Y. 10913  
914 359-5979  
~~XXXXXXXXXX~~  
212-349-8635

April 22, 1974

Mr. Andrew Gargiulo  
853 53rd Street  
Brooklyn, N. Y.

Re: DHJ Stock received in 1972

Dear Mr. Gargiulo:

In 1972 you received from Herbert Haskell 5,000 shares of DHJ stock (apparently restricted as to its sale) as a gift, or as security, or satisfaction of an indebtedness. Immediately after acquiring this stock you attempted to either sell this stock or obtain a loan from a bank using the aforementioned stock as security. Although a concerted effort was made, no buyer could be located to purchase this stock. Banks, due to the restrictions inherent in this stock and despite a legal opinion relative to its marketability from the attorney for DHJ, refused to grant any loans using the aforementioned stock as collateral.

It should be noted that Herbert Haskell, transferor of this stock allegedly did not reflect this transfer on his personal income tax returns.

Law:

In general, an exchange of property is treated in the same manner as a sale, the fair market value of the property received being the equivalent of cash. If the property received in exchange has no fair market value, there is no gain or loss until there is a disposition of that property.



April 22, 1974

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If a gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift. Internal Revenue Code Section 2512. The value of the property is the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of relevant facts. Regs. 25.2512-1. The fair market value of property is a question of fact, but only in rare and extraordinary cases will property be considered to have no fair market value. Regs. 1.1001-1 (a).

There are a number of cases which attribute no ascertainable value to stock purchased under options which were received as compensation for services but subject to an agreement restricting its transfer. Helvering v. Tex-Penn Oil Co. 300 U.S. 481; Propper v. Comm. 89 F. 2d 617; Schuh Trading Co. v. Comm., 95 F. 2d 404; Lehman, 17 T.C. 652 app. dismissed (CA-2) 6/8/52; Kuchman, 18 T.C. 154; Heiner v. Gwinner 114 F. 2d 723 Cert den 311 U.S. 714; Goldwasser, 47 BTA 445, affirmed 142 F. 2d 556 cert den 323 U.S. 765; Trinity Corp. v. Comm., 127 F. 2d 604 cert den 317 U.S. 651; State Tr. Co. (CA-1) 124 F.2d 948.

Relying primarily on the rationale expressed in Robert Lehman 17 T.C. 652 and Harold H. Kuchman 18 T.C. 154, it is apparent that the DHJ stock at the time it was received by you had no ascertainable fair market value. When offered to a bank as collateral for a loan, in spite

Mr. Andrew Gargiulo

April 22, 1974

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of an attorney's opinion as to its transferability, the bank still refused to advance any money. Efforts to sell were also unsuccessful. Although divestiture of this stock was your goal, no buyer could be found for this stock, nor was there any tender of an offer for purchase. Thus a private sale could not be consummated. Due to the apparent restrictive nature of the stock, no public sale could be accomplished.

The key decided case is Robert Lehman, supra. Taxpayer was a partner in an investment banking firm which received stock options as compensation for services. The options were exercised in 1943 but the stock acquired was subject to restrictions which, the Commissioner conceded, made the value of the stock unascertainable, with the result that no income was realized on exercise of the options. However, in a subsequent year the restrictions lapsed, and the stock was sold. Lehman reported no ordinary income from the transaction, instead treating his share of the gain or sale of the stock as long-term capital gain. The Commissioner contended that ordinary income (compensation for services) was realized on lapse of restrictions. The Tax Court held that lapse or termination of restrictions is not a taxable event, and further held that "the gain was properly reported as long-term capital gain from the subsequent sale of the shares".

In the year following Lehman the Tax Court decided Harold H. Kuchman, 18 T.C. 154. In Kuchman an employee exercised an option and acquired stock subject to a one-year restraint on transfer and to a



Mr. Andrew Gargiulo

April 22, 1974

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privilege by the employer to repurchase the stock at cost, if the taxpayer left his employment within one year. The Court held that with these restrictions the stock had no ascertainable value when acquired on exercise of the option and could not be taxed to petitioner at that time.

Regs. 1.61-2(d) (5), which cover restricted property other than options and use the rules promulgated under Regs. 1.421-6, provide that the lapse of restrictions on property acquired through the exercise of a compensatory option is a taxable event, a rule directly contrary to Lehman, supra. This rule has not been tested or established through court decisions. It should be noted that these regulations refer to compensatory options or transfer, which are not directly applicable here.

Although the stock transfer to you was non compensatory, it is apparent that the aforementioned rules as to taxability of restricted stock has probative value here.

The Tax Reform Act of 1969 added a new dimension to the taxability of restricted property with Code Section 83 which is solely applicable with regard to property transferred in connection with the performance of services, not the situation herein.

It is apparent that the aforementioned cases interpreted the Code. The Internal Revenue Service, although having the power to issue regulations with regard to the Internal Revenue Code, has no power to legislate. These regulations are apparently an attempt to legislate and change the court's interpretation of the Code.

Mr. Andrew Gargiulo

April 22, 1974

- 5 -

The law with regard to satisfaction of an indebtedness governing principle is that if the stock had an ascertainable fair market value at the time of receipt of satisfaction of an indebtedness, then the taxpayer is considered to have collected the debt evidenced by the fair market value of the stock received, which basis would be its fair market value.

It should be noted that a plethora of cases decided relative to unregistered or investment letter stock have allowed discounts in excess of 40% where markets were shown to be available and/or borrowings collateralized by the stock were granted by banks. See Husted 47 T.C. 664 (A).

Conclusion:

It is apparent that Regs. 1.61-2(d) (5) and Regs. 1.421-6 have been promulgated to specifically nullify the rationale expressed by the Court in Lehman and Kuchman supra. As of this date no court cases have tested the validity of these regulations or contravened the rationale of these cases.

Thus, pursuing an aggressive tax posture, it is concluded that relying on the Lehman and Kuchman rationale, the DHJ stock when received by you had no ascertainable fair market value and should not be included in income. This conclusion is buttressed by the fact that the transferor apparently independently also concluded that this stock had



Mr. Andrew Gargiulo

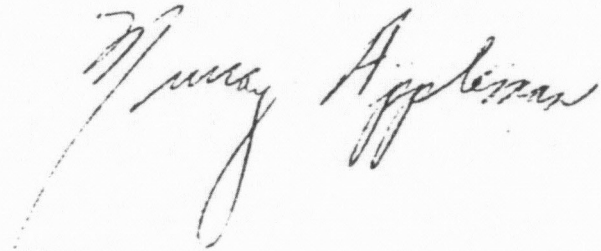
April 22, 1974

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no ascertainable fair market value since he too, did not reflect this transaction on his income tax return.

Respectfully submitted:

MA:ms

A handwritten signature in cursive script, reading "Murray Appleman". The signature is written in dark ink and is positioned to the right of the typed name "Murray Appleman".

Charge to Jury



9 1  
2  
3 THE COURT: Members of the jury, we are now  
4 at the stage of the trial where you are about to  
5 undertake your final function as jurors. Your duty  
6 is a serious and important one. In performing it  
7 you actively share with me the responsibility of  
8 administering justice according to law and the  
9 evidence in this case.

10 Your oath as jurors obliges you to discharge  
11 this final task in an attitude of complete fairness  
12 and impartiality and, as was emphasized by me when  
13 you were selected as jurors, without bias or  
14 prejudice, for or against the Government or the  
15 defendants who are parties to this controversy.

16 You must not permit yourselves to be governed  
17 by sympathy or any other consideration which is  
18 not founded in the evidence and in these instructions  
19 on the law.

20 The case is important to the Government,  
21 since the enforcement of the criminal laws is of  
22 prime importance to the welfare of the community.

23 Obviously, it is equally important to the  
24 defendants who are charged with serious crimes and  
25 have the right to receive a fundamentally fair trial  
and the community has an interest in that, too.

1           The fact that the Government is a party  
2  
3           entitles it to no greater consideration as that of  
4  
5           any other party to the lawsuits.

6           By the same token, it is entitled to no less  
7  
8           consideration.

9           All parties, the Government and individuals  
10  
11           alike, stand as equals before the bar of justice.

12           In this charge I shall describe for you, first,  
13  
14           the general principles which are applicable to all  
15  
16           criminal trials, then the nature of the specific  
17  
18           charges in this case and then the particular rules  
19  
20           of law which are applicable to those charges and  
21  
22           something about the evidence which you have heard  
23  
24           and finally something about how you should go about  
25           reaching a verdict.

          Your final role is to decide and pass upon  
          the issues of fact in the case.

          You are the sole and exclusive judges of the  
          facts.

          You determine the weight of evidence.

          You appraise the credibility of the witnesses.

          You draw the reasonable inferences from the  
          evidence.

          My function now is to instruct you as to the



11 1  
2 law and it is your duty to accept these instructions  
3 as to the law and to apply them to the facts as you  
4 may find them.

5 With respect to any fact matter, I told you  
6 repeatedly throughout the trial, it is your recollection  
7 and yours alone that governs.

8 Anything that counsel, either for the  
9 Government or the defense, may have said with respect  
10 to matters in evidence, whether during the trial,  
11 in questions, in argument, in summation, is not to  
12 be substituted for your own recollection of the  
13 evidence.

14 So, too, as to any matter in evidence,  
15 anything that I may have said during the trial or may  
16 refer to during the course of the instructions is  
17 not to be taken in the place of your own recollection.  
18 Keep in mind at all times that I have no view of  
19 the guilt or innocence of these defendants.

20 The indictment in this case is merely an  
21 accusation of charge. It is not evidence of the  
22 defendants' guilt.

23 Since each defendant has pleaded not guilty,  
24 the Government has the burden of proving the  
25 charges against each defendant beyond a reasonable

doubt.

A defendant does not have to prove his innocence. On the contrary, each defendant is presumed to be innocent of the accusations contained in the indictment.

As to each defendant this presumption of innocence was in his favor at the start of the trial. It continued in his favor throughout the entire trial. It is in his favor now even as I instruct you. It remains in his favor during the course of your deliberations in the jury room.

It is removed only if and when you are satisfied that the Government has sustained its burden of proving his guilt beyond a reasonable doubt. If the Government has failed to sustain that burden, then the presumption of innocence alone is sufficient to acquit him.

I have used the term reasonable doubt. What is reasonable doubt? The words almost define themselves; that there is a doubt founded in reason and arising out of the evidence in the case or the lack of evidence.

It is a doubt which a reasonable person has after carefully weighing all the evidence. Reasonable



1  
2 doubt is a doubt which appeals to your reason, to  
3 your judgment, to your common sense and your  
4 experience.

5 It is not caprice, whim, speculation,  
6 conjecture or suspicion. It is not an excuse to  
7 avoid the performance of an unpleasant duty. It is  
8 not sympathy for a defendant.

9 If, after a fair and impartial consideration  
10 of all the evidence, you can, candidly and honestly,  
11 say you are not satisfied of the guilt of a defendant,  
12 that you do not have an abiding conviction of his  
13 guilt, in sum, if you have such a doubt as would cause  
14 you, as prudent persons, to hesitate before acting  
15 in matters of importance to yourselves, then you  
16 have a reasonable doubt, and in that circumstance  
17 it is your duty to acquit.

18 On the other hand, if, after such an impartial  
19 and fair consideration of all the evidence, you can,  
20 candidly and honestly, say you do have an abiding  
21 conviction of the defendant's guilt, such a conviction  
22 as you would be willing to act upon, in important  
23 and weighty matters in the personal affairs of your  
24 own life, then you have no reasonable doubt, and  
25 under such circumstances, it is your duty to convict.

One final word on this subject.

Reasonable doubt does not mean a positive certainty or beyond all possible doubt. If that were the rule, few persons, however guilty they might be, would be convicted.

Since it is practically impossible for a person to be absolutely and completely convinced of any controverted fact, the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, not beyond all possible doubt.

Nor is it the Government's burden to prove each and every bit of evidence to be true beyond a reasonable doubt. Its burden is to prove beyond a reasonable doubt each and every essential element of the crime charged.

I'll talk to you later in some detail about the elements of the particular crimes in this case.

Reasonable doubt may arise from the failure of the Government to produce evidence.

A defendant is not obligated to present evidence in his favor. He has the right to rely on the failure of the Government to prove its case. He may also rely on evidence brought out on



15 1  
2 cross-examination of witnesses called by the  
3 Government.

4 On the other hand, a defendant has the power  
5 to subpoena anyone in support of his position if he  
6 so chooses and he may exercise that power if he  
7 chooses.

8 I have used the terms "inference" and  
9 "presumption". An inference is a conclusion which  
10 reason and common sense lead you to draw from the  
11 facts which have been established by the evidence in  
12 the case. It is the jury which is to draw the  
13 inferences from the facts that are before it.

14 A presumption is a conclusion which the law  
15 requires the jury to make and continues only so long  
16 as it is not overcome or outweighed by evidence in  
17 the case to the contrary. But, unless and until the  
18 presumption is outweighed by evidence, the jury is  
19 bound to find in accordance with the presumption.

20 For example the presumption of innocence to  
21 which I have already referred.

22 Evidence is the method by which a disputed  
23 fact is proved or disproved. Evidence is generally  
24 classified as direct or circumstantial.

25 Direct evidence is the testimony of a witness

16 1  
2 as to what that witness saw or heard; that is what  
3 he knows of his own knowledge.

4 Circumstantial or indirect evidence, however,  
5 is where facts are established from which, in terms  
6 of common experience, one may logically infer other  
7 facts which are sought to be established.

8 A very simple example of the difference between  
9 direct and circumstantial evidence; if you go outside  
10 and the rain is pouring down and you feel it in your  
11 face, you testified that's what you did. That's  
12 direct evidence. You saw it. You felt it. You  
13 know it was raining.

14 If you look out the window and can't see  
15 whether rain is actually falling or not but every  
16 car that goes by has got its windshield wipers on,  
17 people have their umbrellas up, those are facts  
18 which you see from which you assume or infer that  
19 it is raining outside. That would be circumstantial  
20 evidence that it was raining.

21 What is the evidence in this case which you  
22 may consider? It consists of sworn testimony of  
23 witnesses, regardless of who called them; exhibits  
24 which are in evidence, regardless of who produced  
25 them, and any facts which may have been admitted or



stipulated.

What is not evidence? As I have told you before, statements or arguments of counsel in opening, summation or made during the trial; statements by me are not evidence; any evidence which I have ordered stricken from the record during the course of the trial you may not consider, any questions to which an objection is sustained you are not to speculate as to what the answers might have been.

The Government must prove every element of a crime which is charged beyond a reasonable doubt. If the Government fails as to any element, you must acquit.

The fact that one element of the crime may or may not exist has no bearing upon any other element of the crime charged.

You may not infer solely from the existence of one element of the crime, if you conclude that the element was established, <sup>by</sup> you may not infer that any other element of the crime has been established.

If any element of the crime has not been established in your view beyond a reasonable doubt, your verdict must be not guilty. On the other hand,

1  
2 you must convict a defendant if each of the elements of  
3 any crime has been proved beyond a reasonable  
4 doubt.

5 A difficult aspect of any jury's duty is to  
6 determine the credibility of the witnesses and to  
7 weigh their testimony. In this case as in most cases  
8 it is a critical problem.

9 You, the jurors, are the sole judges of the  
10 credibility of the witnesses you have heard.  
11 Credibility refers to the believability of their  
12 testimony and the weight their testimony deserves.

13 Your determination of the issue of credibility  
14 very largely must depend upon the impression that a  
15 witness made upon you as to whether or not he was  
16 telling the truth of giving you an accurate version  
17 of what occurred.

18 When you walk in the door of this courtroom  
19 and sit in the jury box, while the trial is going  
20 on, what you are deliberating in the jury room, you  
21 have your common sense, your good judgment and  
22 your experience with you.

23 You decide whether or not a witness was  
24 straightforward and truthful; whether the witness  
25 attempted to conceal anything; whether the witness



19 1 had a motive to testify falsely; whether there is  
2 any reason why the witness might color his testimony.  
3

4 In other words, what you try to do, to use  
5 the vernacular, is to size a person up just as you  
6 would do in any important matter where you were  
7 undertaking to determine whether or not a person is  
8 truthful, candid and straightforward.

9 Scrutinize the testimony given and the  
10 circumstances under which each witness testified  
11 and every matter in evidence which tends to show  
12 whether a witness is worthy of belief.

13 Consider each witness' intelligence, state  
14 of mind, his demeanor and manner while on the  
15 witness stand. Consider his own ability to observe  
16 the matters as to which he testified, whether he  
17 shall have impressed you as having an accurate  
18 recollection of the matters. Consider the relation  
19 which each witness might bear to either side of  
20 the case, the manner in which each witness might  
21 be affected by the verdict and the extent to which,  
22 if at all, each witness is either supported or  
23 contradicted by other evidence.

24 Evidence that at some other time a witness  
25 has said or done something which is inconsistent

1  
2 with the witness' testimony at the trial, may be  
3 considered by you for the purpose of judging the  
4 credibility of the witness. If adopted by the witness,  
5 that is if the witness has admitted before you that  
6 he made the prior statement, it may also be used  
7 as affirmative evidence in the case.

8 You may also consider the failure of the  
9 witness to disclose information on prior occasions,  
10 when the opportunity to do so presented itself. You  
11 may consider that as being inconsistent with the  
12 witness' testimony here at the trial.

13 Whether a prior statement is inconsistent is  
14 a fact question solely for your determination. You  
15 also determine whether the failure of a witness to  
16 reveal information prior to his testifying before  
17 you is inconsistent with his present testimony.

18 In making that determination you should  
19 consider all the facts and circumstances attendant  
20 at the time of making the prior statement or the  
21 omission of information. In determining whether  
22 the prior statement is inconsistent with the testimony  
23 given before you, you may take into consideration  
24 the nature of the examination here and the purpose  
25 of the statement on the prior occasion.



1  
2       You may take into consideration normal  
3 variations in retelling an event to determine whether  
4 the statements are truly inconsistent or merely a  
5 difference in describing an occurrence.

6       It is for you and you alone to determine  
7 whether an inconsistency is to a material or  
8 immaterial fact and what effect the inconsistency  
9 has on the witness' credibility.

10       A witness, however, may be inaccurate,  
11 contradictory or even untruthful in some respects  
12 and yet be entirely credible in the essentials of  
13 his testimony.

14       The ultimate question for you to decide in  
15 passing upon credibility is, did the witness tell  
16 the truth here before you as to essential matters.

17       If you find that any witness, for the  
18 Government or the defense, wilfully testified  
19 falsely as to any material fact, you have a right  
20 to reject the testimony of that witness in its  
21 entirety or you may accept that part of portion  
22 which you believe to be credible.

23       The fact that some Government witnesses were  
24 Government employees does not entitle their testimony  
25 to any greater weight or consideration than that

2 1 afforded to any other witness in the case.

3 You will evaluate their credibility the same  
4 way you do that of any other witness.

5 The law does not compel a defendant in a  
6 criminal case to take the stand and testify, and no  
7 presumption of guilt may be raised and no inference  
8 of any kind may be drawn from the failure of a  
9 defendant to testify.

10 As stated before, the law never imposes upon  
11 a defendant in a criminal case the burden or duty  
12 of calling any witnesses or producing any evidence.

13 The weight of the evidence is not necessarily  
14 determined by the number of witnesses testifying  
15 on either side. You should consider all the facts  
16 in evidence to determine which of the witnesses are  
17 worthy of greater credence. You may find that the  
18 testimony of a smaller number of witnesses on one  
19 side is more credible than the testimony of a  
20 greater number of witnesses on the other.

21 If any facts permit inferences which are  
22 equally consistent with guilt and with innocence,  
23 you may not consider those facts as evidence of guilt.  
24 But if you are satisfied from the evidence as a  
25 whole that the defendant is guilty beyond a



reasonable doubt, you should find a verdict of guilty.

At certain times in the trial, the attorneys, and perhaps the Court, too, have mentioned the term "3500 material". That term refers to copies of prior statements of its witnesses which the Government, as required by law, must supply to the defendants' attorneys to use if they wished, in cross-examining those witnesses.

Let us get down to the specific charges in this case. They fall under three groups, as you know. One, the failure to file returns, two, the filing of false returns and; three, conspiracy.

For the time being I ask you to take the conspiracy count, put it on the shelf and we will treat it later as something apart.

We will take up first the failure to file. The offense which is charged in the indictment is that the defendant Andrew Garguilo was a person required by law to make an individual tax return for each of the taxable years ended December 31, 1969, 1970 and 1972 respectively, which returns were due to be filed on or before April 15, 1970, 1971 and 1973 respectively and that he wilfully failed to

1 make such returns in violation of Section 7203 of  
2 Title 26 of the United States Code.

3  
4 Each of these years is covered in a separate  
5 count of the indictment. For example, Count No. 5  
6 reads that during the calendar year 1969 Andrew  
7 Garguilo, who was a resident of Brooklyn, New York,  
8 operated a gambling business from which he received  
9 gross income in excess of \$600; that by reason of  
10 such income he was required by law following the  
11 closing of the calendar year 1969 and following  
12 April 15, 1970 to make an income tax return to the  
13 District Director of Internal Revenue for the  
14 Internal Revenue District of Brooklyn, New York in  
15 the Eastern District of New York or to the District  
16 Director, Internal Revenue Service Center, North  
17 Atlantic Region, Andover, Massachusetts, specifically  
18 the items of his gross income and any deductions or  
19 credits to which he is entitled, that well knowing  
20 all of the foregoing facts, he wilfully and knowingly  
21 failed to make said income tax return to the  
22 District Director of Internal Revenue, the Director  
23 of Internal Revenue Service Center or to any other  
24 proper officer of the United States.

25 Counts 6 and 7 of the indictment, both



1  
2 against Andrew Garguilo, read the same, only the  
3 years are changed.

4 Title 26 of the United States Code, Section  
5 7203, that the defendant Andrew is charged with  
6 violating, provides in part as follows:

7 "Any person required by law or regulation,  
8 to make a return, who wilfully fails to make such  
9 return at the time required by law or regulations,  
10 shall be guilty of a crime. Failure to comply with  
11 the requirements of the Internal Revenue Code for  
12 one year is a separate offense from such failure to  
13 comply for a different year. A defendant's tax  
14 obligations in any one year must be determined  
15 separately from his tax obligations in any other  
16 year."

17 I told you we will talk about elements. With  
18 respect to each year, the failure to file charges,  
19 three essential elements must be proved in order to  
20 establish the offense charged in the indictment.

21 First, that the defendant Andrew Garguilo was  
22 a person required by law or regulation to make a  
23 return of his income for the taxable year in  
24 question.

25 Second, that Andrew failed to make such

26 1 return at the time required by law which time was on  
2 or about April 15th of the succeeding year.  
3

4 Third, that Andrew's failure to make the  
5 return was wilful.

6 As has been said before, the burden is on  
7 the prosecution to prove every element of the offense  
8 charged beyond reasonable doubt. The law never  
9 imposes on the defendant in a criminal case the  
10 burden of producing any evidence or of calling any  
11 witnesses.

12 As to the first element that Andrew was a  
13 person required to file for the year 1969, anyone,  
14 whether married or single, with a gross income of  
15 \$600 or more was required to file a federal income  
16 tax return. For the year 1970, the requirement was  
17 that anyone who was married, as was Andrew, and had  
18 a gross income of \$2,300 or more was required to  
19 file a return. In the year 1972, anyone who was  
20 married and had a gross income of \$2,800 or more was  
21 required to file a return.

22 The Government need not show the exact or  
23 total amount of Andrew's income for each year in  
24 which he is charged with failing to file returns.  
25 The Government need only show that Andrew had gross



1 income in amount equal to or larger than the minimum  
2 amount which required filing of returns in each of  
3 the years charged, that is, \$600 for 1969, \$2,300  
4 for 1970 and \$2,800 for 1972.  
5

6 Andrew is a person required to file a return  
7 if his gross income exceeds those figures, even  
8 though he may be entitled to deductions from that  
9 income in sufficient amount so that no tax is due.  
10 The Government is not required to show that a tax  
11 is due and owing, as an essential element of the  
12 offense charged in the indictment.

13 As to the second element that Andrew did not  
14 file a return for the respective years in question.  
15 This speaks for itself and as Mr. LaRossa pointed  
16 out to you they do not question that he did not file  
17 returns in those years.

18 As to the third element, wilfulness, the  
19 specific intent of wilfulness is an essential  
20 element of the offense of failure to file an income  
21 tax return. The term "wilfully" used in connection  
22 with this offense means, voluntarily, purposefully,  
23 deliberately and intentionally, as distinguished  
24 from accidentally, inadvertently or negligently.

25 Mere negligence, even gross negligence, is

not sufficient to constitute wilfulness under the criminal law.

The failure to make a timely return is wilful if the defendant's failure to act was voluntary and purposeful, and with the specific intent to fail to do what he knew the law requires to be done; that is to say, with a bad purpose or evil motive to disobey or disregard the law which requires him to file a timely return which discloses to the Government facts material to the determination of his tax liability.

For Andrew's failure to file to be wilful under this provision of the law there is no necessity that the Government prove Andrew had an intention to defraud it or to evade payment of taxes.

On the other hand, Andrew's conduct is not wilful if you find that he failed to file a return because of negligence, inadvertence, accident or reckless disregard for the requirements of the law, or due to his good faith misunderstanding of the requirements of the law.

The question of intent is a matter for you, as jurors, to determine. Intent is a state of mind and it is not possible to look into a man's mind to



29 1 see what went on in there. The only way you have  
2 of arriving at the intent of the defendant in this  
3 case is for you to take into consideration all of  
4 the facts and circumstances shown by the evidence,  
5 including the exhibits, and determine from all such  
6 facts and circumstances whether it was Andrew's  
7 intent at the times in question not to file tax  
8 returns. Thus, direct proof of wilful or wrongful  
9 intent or knowledge is not necessary. Intent and  
10 knowledge may be inferred from acts, including the  
11 manner in which Andrew conducted his affairs and  
12 such inferences may arise from a combination of acts,  
13 although any single act standing by itself may seem  
14 unimportant. These are questions of fact to be  
15 determined by you from all the circumstances in the  
16 case.  
17

18 The fact that Andrew filed income tax  
19 returns for the years 1966, 1967 and 1968 on which  
20 he obtained refunds may be considered by you as  
21 evidence of the fact that Andrew was aware of the  
22 requirements that income tax returns sometimes have  
23 to be filed.

24 As to charges relating to filing false  
25 returns. Defendant Anthony Garguilo is charged

1  
2 with filing a false income tax return for each of  
3 the years 1969, 1970 and 1971. Defendant Andrew is  
4 charged with filing a false return for the year  
5 1971.

6 Count 2 of the indictment reads, I give it  
7 to you as a sample quote, "That on or about the 15th  
8 day of April, 1971, in the Eastern District of  
9 New York, the defendant Anthony Garguilo of Staten  
10 Island, New York, did wilfully and knowingly make  
11 and subscribe and cause to be made and subscribed  
12 the United States individual income tax return, Form  
13 1040, for the calendar year 1969 which was verified  
14 by a written declaration that it was made under  
15 penalties of perjury and which was filed with the  
16 Internal Revenue Service in the names of Anthony  
17 and Victoria Garguilo, which income tax return he did  
18 not believe to be true and correct as to every  
19 material matter, in that said return reported income  
20 from wages, interest and rental property.

21 "Whereas, as he then and there well knew and  
22 believed, he had substantial income in addition to  
23 that heretofore stated; and he then and there well  
24 knew and believed that he operated a gambling  
25 business and failed to disclose on said return the



1  
2 gross wagers received, expenses incurred or other  
3 information relative to this business."

4 Counts 3 or 4 of the indictment both against  
5 Anthony, read essentially the same except they  
6 recite the years '70 and '71 instead of '69.

7 Count 8 of the indictment reads essentially  
8 the same except that it charges the crime against  
9 Andrew and covers the year 1971.

10 Section 7206, Subdivision 1 of the Internal  
11 Revenue Code on the basis of which this indictment  
12 has been drawn reads: "That any person who wilfully  
13 makes and subscribes any return which contains or  
14 is verified by a written declaration that is made  
15 under the penalties of perjury and which he does  
16 not believe to be true and correct as to every  
17 material matter, shall be guilty of a crime."

18 As with the crime of failing to file an  
19 income tax return, each taxable year constitutes a  
20 separate offense.

21 The crime under this section of the code  
22 consists of the following: Essential elements.

23 One, that the defendant made and subscribed  
24 a return which contains a written declaration that  
25 it was made under the penalties of perjury.

Two, that he did not believe when he filed it that the return was true as to every material matter.

Three, that the defendant's action in filing such a return was wilful.

As has been said before, the Government has the burden of proving each of these elements beyond a reasonable doubt. The law never imposes upon a defendant in a criminal case that of calling witnesses or producing evidence.

As to the first element that the defendant made and subscribed a return, Section 6064 of the Internal Revenue Code provides:

"The fact that an individual's name is signed to a return shall be prima facie evidence for all purposes that the return was actually signed by him."

Which is to say that unless and until outweighed by evidence in the case loads, you, as the jury, to a different or contrary conclusion, the jury may find that a filed tax return was in fact signed by the person whose name appears to be signed to it.

As to the second element, that the defendant does not believe the return to be true as to every material matter, you may consider the following:



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One: A return that omits material items necessary to the computation of income is not true and correct within the meaning of Section 7206 of the Code.

Two: In a prosecution under Section 7206(1) the Government need only prove the falsity of the return; it need not prove an attempted evasion or an ascertainable amount of tax.

Three: Where there is evidence of unexplained receipts and no reported expenses in connection with those receipts, the Government is not required to speculate as to the amount of the defendant's expenses. Where the defendant has chosen not to report such information he is chargeable with the additional unreported income proved without the benefit of deductions for expenses.

Four; In order to properly assess the amount of tax due the Internal Revenue Service is entitled by law to a report of a person's income from a business, if any, and a report of any expenses deductible therefrom. A taxpayer is not privileged to withholding this information simply because he is engaged in an illegal business with an illegal income. The fact that a person is engaged in a

1 business which is illegal, such as gambling, does  
2 not exempt him from reporting the income from that  
3 business and paying the tax due thereon.  
4

5 Five: As to whether or not a matter in the  
6 return is material, I charge you as a matter of law  
7 that the failure to report income received from  
8 gambling activities is a failure to report a material  
9 matter.

10 The fact that I have listed five considerations  
11 which you may weigh in connection with the second  
12 element does not mean you may not consider other  
13 evidence that bear on the element as I have  
14 described it. I have offered those to you to be  
15 helpful in your deliberations.

16 As to the third element, wilfullness, I will  
17 repeat in essence what I charged you with respect  
18 to wilfullness in connection with failure to file.

19 The term wilfully used in this connection  
20 means, voluntarily, purposefully, deliberately and  
21 intentionally, as distinguished from accidentally,  
22 inadvertantly or negligently.

23 Mere negligence, even gross negligence, is not  
24 sufficient to constitute wilfullness under the  
25 criminal law.



35 1 The making of a false return is wilful if  
2 the defendant's act was voluntary and purposeful,  
3 and with the specific intent to fail to do what he  
4 knew the law requires to be done; that is to say,  
5 with a bad purpose or evil motive to disobey or  
6 disregard the law which requires him to file a true  
7 return which discloses to the Government facts  
8 material to the determination of his tax liability.  
9

10 For the defendant's filing of a false  
11 return to be wilful under this provision of the law,  
12 there is no necessity that the Government prove the  
13 defendant had an intention to defraud it or to evade  
14 the payment of any taxes. On the other hand, the  
15 defendant's conduct is not wilful if you find that  
16 he filed a false return because of negligence,  
17 inadvertence, accident or reckless disregard for the  
18 requirements of the law, or due to his good faith  
19 misunderstanding of the requirements of the law.

20 In a moment I will discuss with you in more  
21 detail the question of a partnership. For the  
22 present, however, I charge you as a matter of law  
23 that apart from the question of partnership, a  
24 defendant was required to report on his individual  
25 tax return for the year in question, information

1 concerning any income which you find that he  
2 received from the gambling operation.  
3

4 If you find that there was a gambling  
5 partnership then you may attribute to each defendant  
6 a portion of the income which the partnership  
7 operation received. If you find there was no  
8 partnership then only the income, if any, which you  
9 find a particular defendant received from the  
10 gambling operation individually should have been  
11 reported on his return.

12 Now I would like to discuss with you in a  
13 little more detail the evidence with respect to  
14 income. The question of income is of obvious  
15 importance in this case. With respect to Anthony,  
16 the Government claims he failed to report on his  
17 tax returns the income he received from the gambling  
18 business. With respect to Andrew, the claim is that  
19 for one year, 1971, he did not report his income on  
20 the return from the gambling business. For the  
21 other three years, the claim is that Andrew did not  
22 file any returns at all which he was required to do  
23 if he received income over the amounts which I  
24 earlier described for you.

25 I previously mentioned that if Andrew --



1 I'm sorry about that. I haven't previously mentioned  
2 it. I will shortly but I think this is where it is.  
3 I will tell you in a moment that if Andrew received  
4 the income in connection with the Plohn and Company  
5 stock sales, if he received that income as an agent  
6 or a nominee of Benny Balsamo, then you should not  
7 consider that income as being Andrew's.  
8

9 Similarly, with respect to monies which the  
10 evidence may show were given to either Andrew or  
11 Anthony in connection with either the bookmaking  
12 or Blackjack activities, if you find any money was  
13 received by a defendant as an agent for someone  
14 else, then you should not consider that money as  
15 income to that defendant.

16 You have heard considerable evidence  
17 covering the question of income. The Government's  
18 view of that was summarized by Agent Wax. His  
19 testimony was given to you as a summary, as an aid  
20 in helping you to digest the evidence which the  
21 Government considered important to the case. You  
22 are not bound, however, by Mr. Wax's analysis.

23 You will recall Mr. Wax mentioned four types  
24 of income. The first type relating to Andrew alone,  
25 is that income from his brokerage account and

1 Plohn and Company, which I referred to a moment ago.

2 Mr. Wax said that income showed short term  
3 capital gains in 1969 of some \$6,200. None of that  
4 income, of course, is chargeable to Anthony.  
5

6 There was no claim that it is gambling income  
7 and defendant Andrew claims he acted only as an  
8 agent, a dummy or nominee for Benny Balsamo. If  
9 Andrew was not acting for himself in connection  
10 with the Plohn and Company income in 1969, then that  
11 income must be eliminated from your consideration.

12 The second item of income to which Mr. Wax  
13 referred was the 10,000 shares of DHJ Industry  
14 stock, 5,000 each of which was transferred to  
15 Andrew and to Anthony. This stock was delivered in  
16 1972 and could apply against Andrew for the tax  
17 year 1972, which is Count 7 of the indictment, in  
18 which he is charged with not filing a return.

19 Keep in mind, though, there is no charge  
20 against Anthony in connection with the 1972 tax  
21 return.

22 I said there were four items of income that  
23 Mr. Wax referred to. Actually, in my discussion  
24 here, there are only three.

25 The third one is, of course, this is income



1 which the Government claims they should be charged  
2 with, was from a gambling business consisting of  
3 the bookmaking operation and the blackjack game.  
4

5 You will recall, periodically throughout the  
6 trial, I gave you some limiting instructions when  
7 some of this evidence went in. At the times the  
8 various bits of evidence were presented, they seemed  
9 to implicate, if you believe them, either one or the  
10 other of the defendants, but not both. I so  
11 instructed you frequently throughout the trial.

12 You will also recall that I qualified that  
13 instruction saying that I might give you contrary  
14 or supplementary instructions at a later date.  
15 There is no need for me to go through the testimony  
16 with respect to income pointing out each of the  
17 limitations which I gave to you through the trial,  
18 but now it is time to supplement those limiting  
19 instructions.

20 Now that all of the evidence in the case has  
21 been presented, if you find based upon all of that  
22 evidence that there was a partnership between Andrew  
23 and Anthony in connection with this gambling business,  
24 then for whatever period you find that partnership  
25 existed, you may find that the income which the

## CHARGE OF THE COURT

testimony indicates was received by one, is also chargeable to the other in whatever proportions you find that the partners were to share.

In short, if you find that there was a partnership and if you believe that the evidence in this case establishes the various elements of the crimes beyond a reasonable doubt, then you may bring in a verdict of guilty against each of the defendants as charged on Counts 2 through 8.

If, however, you find that there was no partnership, then, following the limitations which I gave you during the trial, you may not bring in a verdict of guilty against Anthony on either Count 2, for 1969, or Count 3 for 1970.

This is because that unless you find that the partnership existed there simply is no evidence in the record from which you could reasonably find income to Anthony from the gambling operation during those two years.

I want you to understand that crystally clear. If you find there is a partnership then there are no limitations on the evidence which came in according to my instructions and you may -- I am not saying you are required. You have to weigh the evidence



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2 with respect to all of the elements in the case. If  
3 you find each of those elements established beyond  
4 a reasonable doubt then you may find each of the  
5 defendants guilty as charged on Counts 2 through 8,  
6 but if you find there was not a partnership then  
7 whatever your determination may be on the other  
8 counts of the indictment, you may not find Anthony  
9 under Count 2 or 3 covering 1969 and 1970.

10 Now, to pull the conspiracy down off the  
11 shelf which I asked you to put there. It is charged  
12 in Count 1 of the indictment which I fear I have to  
13 read to you. The indictment reads:

14 That from on or about the 1st day of  
15 January 1969, the exact date being to the grand  
16 jurors unknown, and continuously thereafter up to  
17 and including the date of the filing of this  
18 indictment, which is October 6, 1975, in the  
19 Eastern District of New York and elsewhere, the  
20 defendant Anthony Garguilo and the defendant Andrew  
21 Garguilo, residents of Staten Island, New York, and  
22 Brooklyn, New York, respectively, did unlawfully,  
23 knowingly and wilfully, conspire, combine, confederate  
24 and agree together, with each other, and with diverse  
25 other persons to the grand jurors unknown to  
defraud the United States by impeding, impairing,



1  
2 obstructing and defeating the unlawful Governmental  
3 functions of the Internal Revenue Service of the  
4 Treasury Department of the United States in the  
5 ascertainment, computation, assessment and collection  
6 of the revenue, to wit; income taxes, under the  
7 circumstances and by the means and in the manner  
8 following:

9       It was a part of said conspiracy that Anthony  
10 Garguilo and Andrew Garguilo would file false and  
11 fraudulent federal individual income tax returns  
12 for certain years.

13       It was further a part of said conspiracy that  
14 Andrew Garguilo would refrain from filing individual  
15 federal income tax returns for certain years although  
16 required by law to file such returns.

17       It is also charged in the indictment that a  
18 number of overt acts were committed for the purpose  
19 of effecting the objectives of the conspiracy.  
20 Those overt acts I will not read them to you, but  
21 they are the filing of the false returns, the  
22 three that are charged against Anthony for 1969,  
23 1970 and 1971 and the false return charged against  
24 Andrew for 1972.

25       The defendants are charged with violating



1  
2 Title 18 of the United States Code Section 371;  
3 that is the conspiracy section which is recited in  
4 the indictment. It is a short section. I shall  
5 read it to you.

6 "If two or more persons conspire either to  
7 commit any offense against the United States or to  
8 defraud the United States or any agency thereof in  
9 any manner or for any purpose and one or more of  
10 such persons do any act to effect the object of the  
11 conspiracy, each shall be guilty of a crime."

12 Conspiracy is an offense separate from any  
13 offenses that may have been committed pursuant to  
14 the conspiracy. That is because the formation of a  
15 conspiracy, a partnership in criminal purposes, in and  
16 of itself pronounced a crime by the statute. There  
17 are three elements which make up the crime of  
18 conspiracy.

19 I shall first explain them to you generally  
20 and then I shall discuss them in the context of  
21 this case.

22 Those three elements are, first, the existence  
23 of a conspiracy; second, the accused's membership  
24 in the conspiracy; and third, an overt act by a  
25 conspirator in furtherance of the conspiracy.



1  
2 The indictment charges that the conspiracy  
3 began on or about January 1, 1969 and continued up  
4 to the date of the indictment, which was October 5,  
5 1975. The exact dates are not critical, if you find  
6 beyond a reasonable doubt that the conspiracy charged  
7 existed at any time during that period.

8 What is a conspiracy? It is a combination  
9 of two or more persons, by concerted action, to  
10 accomplish some unlawful purpose, or to accomplish  
11 some lawful purpose by unlawful means. It is a  
12 kind of partnership in criminal purposes, in which  
13 each member becomes the agent of every other  
14 member. The gist of the offense is a combination  
15 or agreement to disobey or to disregard the law.

16 Mere similarity of conduct among various  
17 persons, and the fact they may have associated  
18 with each other, and may have assembled together and  
19 discussed common aims and interests, does not  
20 necessarily establish proof of the existence of a  
21 conspiracy.

22 However, the evidence in the case need not  
23 show that the members entered into any express or  
24 formal agreement, or that they directly, by words  
25 spoken or in writing, stated between themselves



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what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished.

What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

A person cannot conspire with himself, and therefore you cannot find either of the defendants guilty on this charge unless you find beyond a reasonable doubt that they together participated in a conspiracy.

The evidence in the case need not establish that all the means or methods set forth in the indictment were agreed upon to carry out the alleged conspiracy; not that all means or methods, which were agreed upon, were actually used or put into operation.

What the evidence in the case must establish beyond a reasonable doubt is, one, that the alleged conspiracy was knowingly formed; two, that one or more of the means or methods described in the



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2 indictment were agreed upon to be used in an effort  
3 to effect or purpose of the conspiracy, as charged  
4 in the indictment, three, that the defendants were  
5 knowingly members of the conspiracy as charged.

6 One may become a member of a conspiracy  
7 without full knowledge of all the details of the  
8 conspiracy. On the other hand, a person who has no  
9 knowledge of a conspiracy, but happens to act in a  
10 way which furthers some object or purpose of the  
11 conspiracy, does not thereby become a conspirator.

12 Before the jury may find that the defendants  
13 became members of a conspiracy, the evidence in  
14 the case must show beyond a reasonable doubt that  
15 the conspiracy was knowingly formed; that is, in  
16 this case, that each of the defendants wilfully  
17 participated in the unlawful plan, with the intent  
18 to advance or further some object or purpose of  
19 the conspiracy.

20 To act or participate wilfully means to  
21 act or participate voluntarily and intentionally  
22 and with specific intent to do something the law  
23 forbids or with specific intent to fail to do  
24 something the law requires to be done; that is to  
25 say, to act or participate with the bad purpose



17 1  
2 either to disobey or disregard the law.

3 In determining whether or not a defendant  
4 was a member of a conspiracy, the jury is not to  
5 consider what any other persons may have said or  
6 done; that is to say, the membership of a defendant  
7 in a conspiracy must be established by the evidence  
8 in the case as to his own conduct. What he himself  
9 wilfully said or did.

10 The existence of the conspiracy and the  
11 defendants' participation in it may be shown by  
12 circumstantial evidence, by which we mean the  
13 existence of facts and circumstances from which the  
14 existence of other facts and circumstances may  
15 reasonably be inferred.

16 Explicit language or words are not required  
17 to indicate assent or attachment to a conspiracy.  
18 The essence of the conspiracy is the common plan  
19 or design.

20 In determining whether there has been an  
21 unlawful agreement, you may judge acts and conduct  
22 of the alleged co-conspirators which are done to  
23 carry out an apparent criminal purpose. If you  
24 find circumstances of secrecy or attempts to  
25 conceal the true nature of a transaction, these



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2 may be considered by you as circumstantial evidence  
3 of criminal intent.

4 It is necessary that you find beyond a  
5 reasonable doubt that each defendant participated  
6 in the conspiracy with knowledge of at least some  
7 of its purposes and with intent to aid the accomplish-  
8 ment of its unlawful ends.

9 A single act may be enough to draw a defendant  
10 within the ambit of the conspiracy, provided you are  
11 convinced beyond a reasonable doubt that the  
12 defendant knew of the conspiracy and associated  
13 himself with it.

14 Normally in considering evidence as to  
15 conspiracy, the jury should first determine whether  
16 or not the conspiracy existed, as alleged in the  
17 indictment and then determine whether or not the  
18 defendant wilfully became a member of the conspiracy.

19 In this case, however, only two conspirators  
20 are alleged, so that until both of the defendants  
21 became members, there could be no conspiracy, since  
22 a conspiracy requires that at least two people  
23 combine to commit an unlawful act.

24 If it appears beyond a reasonable doubt from  
25 the evidence in the case that the defendants wilfully



49 1 formed the conspiracy alleged in the indictment and  
2 that thereafter either or both of them knowingly  
3 committed, in furtherance of some object or purpose  
4 of the conspiracy, one or more of the overt acts  
5 charged, that is the filing of the false returns in  
6 the four instances alleged, then the success or  
7 failure of the conspiracy to accomplish the common  
8 object or purpose is immaterial.  
9

10 An overt act is any act knowingly committed  
11 by one of the conspirators in an effort to effect  
12 or accomplish some object or purpose of the  
13 conspiracy. The overt act need not be criminal in  
14 nature, if considered separately and apart from the  
15 conspiracy.

16 Now, applying these general considerations to  
17 the conspiracy charged in Count 1 of the indictment  
18 you must keep in mind the particular conspiracy  
19 with which these defendants are charged. It is to  
20 defraud the United States by impeding, impairing,  
21 obstructing and defeating the functions of the  
22 Internal Revenue Service in the ascertainment,  
23 computation, assessment and collection of income  
24 taxes in the manner described in the indictment.

25 In short, the defendants are charged with

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conspiring with respect to their income taxes. They are not, I repeat, not charged with conspiring to run a gambling operation.

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The theory of the Government's case is that the defendants conspired to conceal from the Internal Revenue Service income which the Government contends the defendants were receiving from their gambling operations.

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If you find beyond a reasonable doubt that such a conspiracy to defraud the Government was formed by the defendants, then obviously you will have decided the first two elements of the crime, namely, formation of the conspiracy and the membership of both defendants in it.

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As to the third element, an overt act, you must find beyond a reasonable doubt that at least one of the four overt acts charged in the indictment was committed. Those four acts, as I have told you, are the subscribing of false income tax returns, three of them by defendant Anthony for each of the years 1969, 1970 and 1971, and the fourth by defendant Andrew for the year 1972. That is incorrect, fourth by Andrew, also for 1971.

25

If you find that all three elements of the



1  
2 crime of conspiracy which is charged in the indict-  
3 ment has been proved by the Government beyond a  
4 reasonable doubt, then you must find both defendants  
5 guilty. If you find that any one or more of the  
6 elements has not been proved beyond a reasonable  
7 doubt, then you must find both defendants not guilty  
8 on the conspiracy count. You may not find one of  
9 the defendants guilty of the conspiracy and the  
10 other defendant not guilty.

11 Just a wee bit more. My voice will hold up  
12 as well as your ears have been.

13 I have sought not to comment on the evidence  
14 in the case in any detail or to give you any impression  
15 as to my own view, if I have one, of the relative  
16 weight of the evidence. If I have done so, however,  
17 inadvertently, I ask you to disregard that entirely  
18 because you are the sole judges of the facts.

19 From time to time in the course of the trial  
20 objections have been made and rulings on evidence  
21 were given. You are to draw no inferences from the  
22 comparative frequency of objections from one side or  
23 the other, or from the comparative record in having  
24 objections sustained. Where an objection is sustained,  
25 disregard the question, draw no inference from its

1 wording about what answer might have been given.  
2  
3 Where an objection is overruled, the evidence then  
4 received has no special weight simply because it was  
5 unsuccessfully objected to.

6 Under your oath as jurors you cannot allow  
7 a consideration of the sentence which may be imposed  
8 upon a defendant, if he is convicted, to enter into  
9 your deliberations, or to influence your verdict in  
10 any way. In the event of a conviction, the duty  
11 of imposing sentence rests solely with the Court.

12 Your duty is to decide the case solely upon  
13 the evidence, to weight the evidence in the case and  
14 to determine the guilt or innocence of the defendant  
15 solely upon the basis of such evidence and these  
16 instructions.

17 The verdict in each instance must be  
18 unanimous.

19 Each of you, as jurors, is entitled to your  
20 own opinion but each of you should exchange views  
21 with your fellow jurors. That is the very purpose  
22 of jury deliberation, to discuss, to consider the  
23 evidence. Listen to the arguments of your fellow  
24 jurors, to present your individual views, to consult  
25 with one another and to reach an agreement based



solely and wholly on the evidence; if you can do so without violence to your own individual judgment.

Each of you must decide the case for yourself after consideration with your fellow jurors but you should not hesitate to change an opinion which, after discussion with your fellow jurors, appears to you to be erroneous.

However, if after carefully considering all the evidence, and the arguments of your fellow jurors, you entertain a conscientious view that differs from others, you are not to yield your judgment simply because you are outnumbered. Your final vote must reflect your conscientious view as to how the issues should be decided.

The charge here is most serious. A just determination of this case is important to the public. It is equally important to these defendants.

Under your oath as jurors, you must decide this case without fear or favor and solely in accordance with the evidence and the law.

If the Government has failed to carry its burden as to a defendant, your sworn duty is to acquit; if it has carried its burden as to a defendant, you must not flinch from your sworn duty.

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You must convict.

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I will send in to you for your consideration a copy of the indictment and all of the exhibits in the case.

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If you wish to have some of the testimony repeated, you may make the request. I will call you back into court and read to you those portions which you desire to hear.

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When you retire to the jury room your first duty will be to elect your foreman or forelady who will preside over your deliberations. During those deliberations you should assume the attitude of judges of the facts rather than partisans or advocates. In that way you will be making a high contribution to the administration of justice.

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You must report a verdict on each of the eight counts. On each count your verdict must be unanimous and it must be either guilty or not guilty.

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To assist your foreman in reporting your verdict I have prepared and will give to you a form listing the counts of the indictment, the defendant or defendants to which each count is applicable, the charge for that count, the time



1  
2 period to which the count is applicable and a place  
3 to check off whether the final determination is  
4 either guilty or not guilty.

5 The Marshal will be available outside the  
6 jury room to report when you have reached a verdict  
7 or to let the Court know if there are any questions  
8 which you wish to have answered.

9 When you have reached a verdict and are ready  
10 to report, simply advise the Marshal; but do not  
11 disclose to him what your verdict is. I will have  
12 the foreman announce it orally back here in the  
13 courtroom.

14 Before I formally give you the case for your  
15 deliberations, I am going to ask you to retire  
16 to the jury room just once more for a very short  
17 period of time so that I may review the charge with  
18 the attorneys to make certain that I have neither  
19 omitted nor misstated something which I intended to  
20 be otherwise.

21 Please step out to the jury room for just a  
22 moment. Do not yet discuss the case.

23 (Jury leaves courtroom.)

24 THE COURT: Gentlemen, any exceptions, requests?

25 MR. WALL: Yes, your Honor.

Judgment of Conviction

December 10, 1976



DEFENDANT

ANDREW GARGUILO

DOCKET NO. 75CR736

## JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government  
the defendant appeared in person on this dateMONTH DAY YEAR  
DECEMBER 10, 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

J. LA ROSSA, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY. on counts 5 and 7FINDING &  
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-26, U.S.C. Sec. 7203, Internal Revenue Code, in that during the calendar years 1969 and 1972, the defendant ANDREW GARGUILO, who was a resident of Brooklyn, N.Y. operated a gambling business from which he received gross income in excess of \$600 and \$2,800 respectively; that by reason of such income he was required by law following the close of the respective calendar years, to make an income tax return to the District Director of Internal Revenue; that well knowing this he knowingly and wilfully failed to make such returns

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of six (6) months to pay a fine of two thousand, five hundred dollars (\$2,500.00) on count five (5). The defendant is sentenced on count seven (7) to imprisonment for a period of six (6) months and to pay a fine of two thousand, five hundred dollars (\$2,500.00). Execution of sentence on count seven (7) is suspended and the defendant is placed on probation for a period of three (3) years. The defendant's probation period to commence upon completion of sentence on count five (5). Execution of sentence stayed pending appeal. On motion of the Assistant United States Attorney, D. McCaffrey, count six (6) is dismissed as well the underlying indictment.

SENTENCE  
OR  
PROBATION  
ORDERSPECIAL  
CONDITIONS  
OF  
PROBATIONADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT  
RECOMMEN-  
DATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

By ( ) CLERK  
( ) DEPUTY

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

Date

Notice of Appeal

December 10, 1976



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

v.

ANDREW GARGUILO,

Defendant.

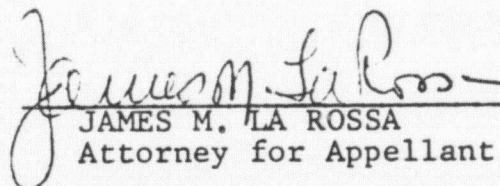
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NOTICE OF APPEAL

No. 75 CR 736(S)

PRATT, J.  
District Court Judge

NOTICE is hereby given that the defendant ANDREW GARGUILO appeals to the United States Court of Appeals for the Second Circuit from the Judgment entered in this action on December 10th, 1976.

  
JAMES M. LA ROSSA  
Attorney for Appellant

522 Fifth Avenue  
New York, New York 10036

687 4100

Dated: December 10th, 1976

TO: HON. DAVID TRAGER  
United States Attorney  
Eastern District of New York  
United States Courthouse  
225 Cadman Plaza East  
Brooklyn, New York 11201

Defendant's Address:  
853 53rd Street  
Brooklyn, New York

appended

Feb 7 1977

14 14/10/77

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U.S.A.

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EAST. DIST. N.Y.

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Garcia